UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

GLOBE WHOLESALE TOBACCO DISTRIBUTORS INC., D/B/A/GLOBE WHOLESALE, CO., **Respondent,**	:	**Case Nos. 29-CA-093481**
Ali Lamnii, **Charging Party.**	:	

GLOBE'S ANSWERING BRIEF IN OPPOSITION TO THE GENERAL COUNSEL'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

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Globe Wholesale Tobacco Distributors, Inc., d/b/a Globe Wholesale Co. ("Globe") by its attorneys Epstein Becker & Green, P.C., submits this Answering Brief in Opposition to the General Counsel's Exceptions, in Opposition to the Motion to Supplement the Record, and in support of the Respondent's contention that the Administrative Law Judge's Decision dismissing the Complaint should be adopted by the Board.

PRELIMINARY STATEMENT

On August 11, 2014, Administrative Law Judge Raymond P. Green ("ALJ") issued a Decision and Order dismissing the Complaint on the grounds that the General Counsel failed to establish by credible evidence that Globe terminated the Charging Party Ali Lamnii's ("Charging Party" or "Lamnii") employment because he attempted to join Local 805, International Brotherhood of Teamsters ("Teamsters" or "Union") or for engaging in protected concerted activity in violation of Sections 8(a)(1) and (3) of the Act. The ALJ held that Globe's President Leonard Schwartz credibly testified that the Charging Party was never fired, but in fact voluntarily resigned.

Contrary to the Board's long established policy not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces the Board that they are incorrect, the General Counsel's Exceptions and Brief urge the Board to reverse the ALJ's credibility findings. *Standard Dry Wall Prods.*, 91 NLRB 544 (1950), *enf'd*, 188 F.2d 362 (3d Cir. 1951). The General Counsel contends erroneously that the ALJ committed two "grave errors" by (1) refusing to hear testimony about the Charging Party's claim for inclusion into the Union which was not

alleged in the Complaint – the Regional Director having dismissed such allegations after investigation and (2) crediting the testimony of Globe's President Leonard Schwartz that Globe did not fire the Charging Party. (General Counsel's Brief in Support of Exceptions to the Decision of the Administrative Law Judge (General Counsel's Brief") at 1,2.) The General Counsel's Exceptions are without merit.

Respondent respectfully submits that the ALJ properly limited the scope of the testimonial evidence to the sole allegation in the Complaint -- that Globe terminated Lamnii's employment in violation of Sections 8(a)(1) and (3) of the Act and he correctly dismissed that allegation based on the testimony adduced and evidence presented at the hearing. The ALJ properly concluded that the issue of whether Lamnii was covered under the collective bargaining agreement as a full-time employee was not before him because the Regional Director had dismissed that claim. In any event, the ALJ found that "it is enough that he [the Charging Party] had a colorable claim under the contract. For if he made such a claim and the Employer, in fact, discharged him because he made that claim, then his discharge within the 10(b) period would be illegal under the Act." (ALJD 3:18-24)[1] Since the ALJ assumed that Lamnii had a colorable claim that he was covered under the contract, he did not err in holding that the exact number of hours that Lamnii worked at Globe were irrelevant for the purpose of deciding the issue set forth in the Complaint.

[1] References to Administrative Law Judge Raymond P. Green Decision are referred to as "ALJD" followed by the page number and line numbers; References to the official transcript of the hearing in Case 29-CA-093481, held on June 23, 2014 shall, be designated herein as "Tr. __"; references to Exhibits introduced by the Counsel for the General Counsel at that hearing shall be designated herein as "GC __"; References to Exhibits introduced by Respondents at that hearing shall be designated herein as "R. __"; references to the Collective Bargaining Agreement, introduced as a Joint Exhibit during the hearing, shall be designated herein as "JE 1".

The General Counsel's argument to overrule the ALJ's decision to credit Schwartz's testimony that Lamnii was never fired is not based on substantial evidence and must be rejected. The Boards' well-established policy is not to overrule an administrative law judge's credibility resolutions. *See Standard Dry Wall.* The testimony of Globe's President Leonard Schwartz that Lamnii was never fired was not contradicted by any witness including the Charging Party. According to Lamnii, Schwartz told him that the business was " running a bit slow. If you can give me some time, you will be up next in the overall position.'" (Tr. 41-42). Schwartz testified that he told Lamnii to "[j]ust stay as you are. As soon as it became open, I would give him a [full-time] job, period." (Tr. 125).[2] In this circumstance there is no basis to overturn the ALJ credibility determinations and the reasonable inference that Lamnii was not fired. In this regard Respondent respectfully submits that in contrast to Schwartz's testimony which was straightforward and consistent with his past treatment and relationship with Lamnii, Lamnii's testimony was unreliable. Even Lamnii conceded: "I don't remember... what he said, I don't remember even what comes out of my mouth." (Tr. 85). Given Lamnii's concession, the ALJ's credibility determinations must be upheld.

STATEMENT OF THE CASE

On November 14, 2012, the Charging Party filed an unfair labor practice charge ("Charge") alleging that Globe discriminated against him by refusing to allow him to join

[2] Lamnii claimed that he could not remember whether Schwartz told him that there were no full time jobs available but he did admit Schwartz saying that he would offer Lamnii the next six-day a week job. (Tr. 85).

the Union in violation of Sections 8(a)(1) and (3) of the National Labor Relations Act ("Act"). (GC 1A). Lamnii subsequently amended the Charge to allege that Globe had discriminated against him by failing to apply the terms of the CBA to him, a part-time employee[3], and by terminating his employment on November 12, 2012 in response to his having contacted the Union to seek assistance in applying the terms of the CBA to him. (GC 1D).[4]

On January 29, 2013, the Regional Director ("RD") dismissed the allegations in the Amended Charge which alleged that Globe discriminatorily failed to apply the CBA to Lamnii (GC 1C), and deferred processing of the remainder of the Charge based on Globe's agreement to arbitrate the Union's then pending grievance. (GC 1D). On September 23, 2013, the Counsel for the General Counsel ("GC") advised Globe that the RD "would be revoking the deferral because the Union had not proceeded to arbitration." The RD however, never issued an order revoking the deferral to arbitration. (Tr. 8-9; R. 1).

On March 27, 2014, the RD issued the Complaint which alleges only that Globe terminated Lamnii's employment because he attempted to join the Union in violation of Sections 8(a)(1) and (3) of the Act. (GC 1F). The case was tried before Administrative Law Judge Raymond P. Green on June 23, 2014.

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[3] Full time employment is defined in the CBA as work in excess of 1,000 hours per year.

[4] Subsequently, the Union filed a grievance on Lamnii's behalf regarding his non-inclusion in the unit, but later withdrew the grievance when it discovered there was no factual basis for Lamnii's claim that he had been working full time.

THE ALJ'S DECISION

On August 14, 2014, the ALJ issued his Decision and Recommended Order to dismiss the Complaint. The ALJ properly limited the issue at the hearing to whether Globe discharged the Charging Party because he attempted to join the Teamsters or engaged in other concerted activity. (ALJD 1:35-37) At the hearing and in his Decision, the ALJ acknowledged that the RD had dismissed the Charging Party's allegations that Globe failed to apply the terms of the collective bargaining agreement to him as time barred and therefore "there is no issue in this case regarding the merits of Lamnii's claim that the Respondent failed to apply the terms of a collective bargaining agreement to him." (ALJD 1;GC 1C; Tr.20) The ALJ framed the issue before him as whether or not Lamnii made complaints; the conversations he had; or whether or not he quit." (Tr. 20). After hearing the evidence and weighing the credibility of the witnesses, the ALJ dismissed the Complaint because he found that Globe did not terminate Lamnii's employment.

BACKGROUND EVIDENCE

Globe has been engaged in the wholesale distribution of cigarettes, cigars, tobacco products and candy in the New York City area for over forty years. (Tr. 111). As a tax agent of New York State, Globe also collects stamps and revenue for the State on its cigarette sales. (Tr. 109). Leonard Schwartz, Globe's President, is a 1959 graduate of New York University Law School and is a member of the Wholesale Tobacco Association of New York. ("Association") (Tr. 23, 32,108, 111).

Local 805 has represented Globe's employees since approximately 1970. The parties have enjoyed a good relationship over the course of this period. (Tr. 111-112).

Globe is a member of the Association and a signatory to its CBA with Teamsters Local 805. (Tr. 110-111). The most recent CBA expired on September 14, 2003; however, the parties have executed subsequent letter agreements and memoranda extending the terms of the CBA and increasing employees' wages and benefits. (Tr. 25, 111; JE 1). The CBA expressly provides that employers can hire part-time employees who are not covered by the Agreement. (Tr. 17, 112; JE 1).

Lamnii began working at Globe in 1997 when he was hired by Schwartz as a helper. (Tr. 26). After one or two years, Lamnii became a driver for Globe. At the time of his resignation in 2012, Lamnii worked three days a week: Fridays, Saturdays, and Mondays, as a part-time driver. (Tr. 26-27). Lamnii never applied to become a member of the Union and has never paid Union dues. (Tr. 76, 82).

Schwartz and Lamnii enjoyed a good relationship. Schwartz testified that Lamnii was one of his best and most honest employees; one of the few employees who would bring back unsold product, which could be valued in the thousands of dollars. (Tr. 112-113). Schwartz also described Lamnii as a confidant who would inform Schwartz when other drivers were stealing from Globe. (Tr. 113)[5]. Schwartz's relationship with Lamnii was positive throughout the course of Lamnii's career at Globe, even when he requested long leaves of absence; e.g., when Lamnii asked to take a three-month long vacation to visit his family in Morocco in 2012. Since Lamnii was a part time employee, Schwartz granted his request. (Tr. 55). Indeed, the ALJ was impressed by Schwartz'

[5] In 2011, Lamnii asked Schwartz for a job reference for employment with J.B. Hunt Transport, a trucking company, which Schwartz gladly provided. (Tr. 52-53; GC 3). Schwartz had also previously provided Lamnii with a letter confirming his job status at Globe for Lamnii's immigration lawyer. (Tr. 51; GC 2).

testimony regarding his relationship with Lamnii, stating that "[t]his is the first case that I have experienced where in defense of an alleged 8(a)(3) discharge, the Respondent's owner asserts that the alleged discriminate was the best, the most honest, and the most loyal employee that he has ever had." (ALJD 4:31-33).

When Lamnii did express a desire to join the Union, Schwartz told him that he could be included in the bargaining unit if he agreed to work full time, e.g., six days per week. (Tr. 80, 124). Lamnii declined to work for Globe on a full-time basis because he had other business interests (Tr. 85). Therefore, pursuant to the terms of the CBA, Lamnii's employment fell outside the scope of the CBA. (Tr. 30-32, 57-58).

Notwithstanding his repeated attempts to join the Union since 2004, Lamnii testified that Globe did not terminate his employment, nor did it take any other adverse action against him prior to November 2012. (Tr. 73-74)[6]. Lamnii also testified that the other employees who were in the Union worked full-time six days a week.

In February 2012, Schwartz offered Lamnii a full-time position vacated by Jimmy Kline, who had recently retired. (Tr. 79). Lamnii admits that this conversation occurred and that he declined the position. Thereafter Schwartz offered the position to another employee who accepted it.

When Lamnii approached Schwartz in mid-November 2012 and asked him why Antonio Reyes, an employee who had recently begun working for Globe, had been

[6] Since the Regional Director dismissed the 8(a)(5) allegations, Lamnii's testimony was only admitted over Globe's objection as background. Lamnii's claim that Schwartz began to reduce his days worked from six days to three days per week in early 2012 is time barred as occurring more than 6 months before the filing of the Charge. 29 U.S.C. § 160. In any event, Lamnii testified that his days worked and assignments were determined by Louis Davila, who Lamnii testified did not like him personally and who would send him on deliveries that combined Brooklyn and Staten Island, some of which he refused. (Tr. 104).

included in the bargaining unit (Tr. 44, 123), Schwartz replied that Reyes was a full-time salesmen/driver who brought substantial business to Globe and delivered to his own customers (Tr. 123-124). Lamnii admitted that Reyes worked six days a week. (Tr. 29, 44). Schwartz also told Lamnii that he would offer him the next available full-time position which would be covered in the bargaining unit. (Tr. 41-42, 124-125). In response, Lamnii left Globe and never again reported for work. (Tr. 125).

Schwartz testified, without contradiction that he *never* fired Lamnii; a fact that Lamnii conceded at the hearing. (Tr. 84). Lamnii did not testify that he was told by Schwartz or anyone else that he could not continue working his part-time three-day a week schedule until a full-time position became available. Indeed, Schwartz testified that he told Lamnii to "[j]ust stay as you are. As soon as it became open, I would give him a [full-time] job, period." (Tr. 125).[7] According to Lamnii, Schwartz told him that the business was "running a bit slow. If you can give me some time, you will be up next in the overall position." (Tr. 41-42).

The Union filed a grievance on Lamnii's behalf in December 2012. Globe agreed to waive any time bar and the Regional Director deferred further processing of the Change on January 29, 2013. (Tr. 81; GC 1). After the Union decided not to proceed to arbitration, the RD issued the Complaint without the RD ever having revoked the deferral.

[7] Lamnii testified that he could not remember whether Schwartz told him that there were no full time jobs available but he did admit Schwartz saying that he would offer Lamnii the next six-day a week job. (Tr. 85).

In February 2013, Schwartz again offered Lamnii a full-time position, which he declined. (Tr. 94, 106, 125; R. 3).

ARGUMENT

1. The ALJ Did Not Err in Finding That Lamnii Was Not Discharged

The ALJ correctly held that the General Counsel failed to meet his burden of proving that Globe terminated Lamnii's employment, finding:

> In my opinion, the credited evidence is insufficient to establish that Lamnii was discharged. I find that during the conversation with Schwartz on November 12, he was told that Reyes (instead of him) was put into the Union because Reyes was, inter alia, assigned to drive six days per week. Additionally, I conclude that during this conversation, Schwartz told Lamnii (as he had done in the past), that he would offer him the next six day per week job that came up. Given the context of this conversation, any statement that Schwartz made to the effect that he would call Lamnii if he got some work should be construed as meaning that if the company got additional work justifying giving Lamnii a six day schedule, it would do so. Contrary to the General Counsel, I do not find that this statement should be construed to mean that Lamnii was being discharged or laid off. Nor do I find that Lamnii could reasonably have construed the statement as meaning that he had been discharged. *Leiser Constr., LLC.,* 349 NLRB 413, 415-416 (2007).

(ALJD 5:9—20).

Contrary to established Board policy, the General Counsel erroneously urges in Exceptions No. 13-17 that the ALJ's credibility determination were wrong. Board policy precludes overruling an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces the Board that they are incorrect. *Standard Dry Wall Prods.*, 91 NLRB 544 (1950), *enf'd*, 188 F.2d 362 (3d Cir. 1951).

Because the preponderance of record evidence clearly supports the ALJ's credibility findings and inferences, the ALJ's Decision should be adopted by the Board.

This is especially true here where there is no non-testimonial evidence that Lamni's employment was terminated. The General Counsel's argument that Schwartz's statement that he would call Lamnii if a full-time position became available, was a termination – belies common sense and the ordinary meaning of the words spoken. Certainly Schwartz's words would not "logically lead a prudent person to believe his tenure has been terminated." *Leiser Constr., LLC.,* 349 NLRB No. 41 (2007); *Nations Rent, Inc.*, 342 NLRB 179 (2004) (quoting *North Am. Dismantling Corp.*, 331 NLRB 1557 (2000), *enf'd in relevant part by* 35 F. App'x 132 (6th Cir. 2002)). In determining that Lamnii could not have logically believed that his employment was terminated, the ALJ properly considered "the entire course of relevant events" from the employee's perspective. *Id.* Since Schwartz's testimony was clear and unequivocal, the ALJ properly determined that Globe did not terminate Lamnii's employment. (ALJD 5:9-10,14-29; Tr. 84-85, 101-102, 113, 125).

In *Leiser Construction,* the Board found that the General Counsel failed to prove by a preponderance of evidence that employee Travis Williams, a union organizer,had been fired after reporting to work with a rat sticker on his hardhat. There, upon seeing the sticker, Williams' employer told him that he could not work with "that sticker" on his hardhat and Williams responded by telling the employer that he was "on strike," and ultimately left the construction site. The Board held that the General Counsel failed to prove that Williams had been discharged, holding that the logical meaning of the

employer's words was that Williams could work if he removed the sticker, and that Williams' strike remark signaled his refusal to work, not the employers' refusal to permit him to work.

Here, the ALJ's finding that Schwartz's statement to Lamnii that if Globe got additional work it would offer Lamnii the next available six days a week job full-time job cannot be construed to mean that Lamnii was being fired. The ALJ's conclusion is fully supported by the record evidence including Schwartz's subsequent offer to employ Lamnii. (Tr. 90). Certainly, Schwartz's subsequent job offer cannot be construed as supporting the General Counsel's argument that Lamnii was fired. Most surprising given the General Counsel's hyperbole is the fact that Lamnii testified on both direct and on cross-examination that *no one ever told him that he was fired.* (Tr. 84). Lamnii acknowledged that after he asked Schwartz whether he could be put in the Union, Schwartz told him that Globe was running a bit slow, but that he would offer him the next full time position when it was available. (Tr. 41-42, 85). Lamnii further testified that when he pressed Schwartz to explain why an employee who had not worked at Globe as long as Lamnii did was put in the Union, Schwartz explained that the employee was a full-time six day a week driver-salesman. (Tr. 45, 124-125). Schwartz testified that he never told Lamnii that he could not continue as a part-time three-day a week worker until a full-time slot opened up. In fact, Schwartz told Lamnii to *"stay as you are"* until the next full-time position became available, for which Lamnii would receive top priority (Tr. 41-42, 125). Given the testimony, the ALJ properly concluded that no reasonable person would interpret Schwartz's words to mean that Lamnii's

employment was terminated. For the General Counsel to argue that "have a good day" can *only* mean that Lamnii was being terminated, demonstrates that the General Counsel has never gotten a cup of coffee at Starbucks where employees are trained to say "Have a good day". (General Counsel's Brief at 17) Certainly, the General Counsel's omission of a critical part of the conversation where Schwartz told Lamnii to "stay as you are" demonstrates a blindness to reality for a government prosecutor. (Tr. 41-42, 125). When the testimony is viewed in its proper context, no reasonable person could conclude that his employment was being terminated when told to have a nice day.

Schwartz's testimony that he never fired Lamnii was also properly credited because it made sense both in the context of the conversation and the longstanding and excellent relationship between Schwartz and Lamnii. It also made sense in light of Lamnii's admission that Schwartz offered him the next available full-time position – which would have been included in the CBA unit. Schwartz had no reason to terminate Lamnii, whom he described as one of his best workers who had saved Globe thousands of dollars by informing Schwartz when other drivers were stealing from Globe. Lamnii presented no evidence of animus between Schwartz and Lamnii. Moreover, according to Lamnii this was not the first time he had asked to be put in the union and he was never discharged or disciplined before.

While Schwartz's and Lamnii's description of the November 12 conversation are largely consistent, where they differ, Schwartz's account of the events was properly credited. When Lamnii was asked for details regarding the conversation during his

cross-examination, Lamnii testified: "I don't remember... what he said, I don't remember even what comes out of my mouth." (Tr. 85). Thus, when asked whether or not he told Schwartz that "[he] could do better as an over-the-road driver," Lamnii testified that "Maybe; honestly, I don't remember the conversation." (Tr. 85). The evidence also shows that Lamnii was looking to leave Globe;s employment for a trucking job with another company, which evidence further supported the ALJ's finding that Lamnii was not fired. (ALJD 5:9-20; GC-3). In these circumstances, the ALJ had an objective basis not to credit Lamnii's selective memory.

Because the General Counsel failed to prove that Lamnii was fired, he failed to establish a prima facie case under *Wright Line* and the ALJ correctly ruled that the Complaint should be dismissed.

2. Contrary to the NLRB Rules and Regulations, the GC Failed to Except to the ALJ's Rulings on His Subpoena

The General Counsel's exceptions to the ALJ's ruling on Subpoena Duces Tecum B-1-HSVZ23 ("Subpoena") and his motion to supplement the record post-hearing with the Subpoena, Globe's Motion to Revoke the Subpoena and General Counsel's Opposition to Globe's Petition to Revoke, is barred by the General Counsel's failure to take a timely exception to the ALJ's ruling on the record. Since the General Counsel concedes that the ALJ's ruling and documents that he references are "not included in the hearing transcript or the Administrative Law Judge's Decision," (General Counsel's Exceptions, page 3) General Counsel has failed to satisfy the requirements for supplementing the record as set forth in § 102.48(d)(1) of the Board's Rules and Regulations. Certainly, the General Counsel has not demonstrated "extraordinary

circumstances" warranting the reopening of the record. Specifically, the General Counsel has failed to: (1) explain why he failed to adhere to the ALJ's directive allowing an aggrieved party to add the requested documents to the record, and (2) show that the inclusion of the documents would affect the outcome of the ALJ's Decision. Because the ALJ's Order and the documents in question are not in the record, the General Counsel cannot except to them. Section 102.46 of the Board's Rules and Regulations.

The Board's Rules and Regulations require:

> (b)(1) Each exception (i) shall set forth specifically the questions of procedure, fact, law, or policy to which exception is taken; (ii) *shall identify that part of the administrative law judge's decision to which objection is made*; (iii) shall designate by precise citation of page the portions of the record relied on; and (iv) shall concisely state the grounds for the exception.... (emphasis supplied)

In the absence of exceptions compliant with Section 102.46, the Board has held that it must adopt "as a matter of course" an ALJ's decision, including dispositive findings and conclusions of law, even if "solely because no exceptions were filed to [the] finding by any of the parties." *Anniston Yarn Mills*, 103 NLRB 1495, 1495 (1953). Because the General Counsel has failed to cite to any record of the ALJ's Ruling on the Subpoena or the underlying documents, the General Counsel's Exception to the ALJ's Order regarding the Subpoena and his failure to include such documents in the record are not the subject of a proper exception under Section 102.46.

3. The ALJ Properly Excluded Evidence of Charging Party's Work Hours and His Coverage under the Collective Bargaining Agreement.

The ALJ's properly excluded testimony regarding time records and Lamnii's hours worked because the RD issued a very narrow Complaint. (GC-1(F)) The only issue framed by the Complaint before the ALJ was whether Globe discharged Lamnii because he wanted to join the Teamsters or for concerted activity. Since the Complaint was narrowly drafted by the General Counsel, the General Counsel's Exceptions 1-2 are not well taken as he sought to litigate an issue that was not before the ALJ.

Section 102.35(a) of the Board's Rules and Regulations make it clear that it is the duty of the ALJ to inquire into the circumstances surrounding an alleged unfair labor practice *as set forth in the complaint or amended complaint."* (emphasis supplied). Since the Board's decision cannot be based on an allegation that is not contained in the complaint, *NLRB v. Blake Const. Co.*, 663 F.2d 272, 280 (D.C. Cir. 1981), the ALJ's ruling was clearly correct as all that the ALJ did here was to exclude evidence that was not relevant to the allegations in the Complaint. The ALJ correctly ruled that the issue of whether the Charging Party was covered under the collective bargaining agreement or the Charging Party's hours were irrelevant to the allegations in the Complaint and barred by the Regional Director's Decision to not issue a Complaint on the allegations in Lamnii's Charge. (GC 1(C)).

4. The General Counsel's Exceptions Are Meritless

The General Counsel's exception to the ALJ's finding that the collective bargaining agreement provides that Respondent is allowed one additional part time, temporary or casual employee above the cap set forth in the basic agreement (General

Counsel Exception No. 3) ignores the undisputed written terms of the collective bargaining agreement. (Joint Exhibit 1, Side Letter 2, Tr. 25).

General Counsel's Exceptions No. 4, 5 and 10 ignore the record testimony. The record is clear that in 2012, Lamnii worked three days a week: Fridays, Saturdays, and Mondays, as a part-time driver. (Tr. 26-27). Lamnii was not employed as a full-time employee. Lamnii never applied to become a member of the Union and has never paid Union dues. (Tr. 76, 82). Lamnii testified that none of the other drivers in the bargaining unit were working fewer than six days a week while he was working three days a week. (Tr. 49, 63).

General Counsel's Exception Nos. 6 and 10 are not well taken as the ALJ held that Lamni had a colorable claim that he was covered under the contract.

General Counsel's Exception No. 8 ignores the undisputed record testimony that Globe offered Lamnii a full-time job in February 2012 when Jimmy Klines' full-time union position became available upon his retirement. (Tr.78-79). Equally baseless is General Counsel's Exception No. 9 because the evidence shows that Antonio Reyes was hired as a full-time six-day a week union employee. (Tr. 44, 81).

CONCLUSION

Based on the evidence in the record, Globe respectfully urges that ALJ's Decision dismissing the Complaint be affirmed and that the General Counsel's Exceptions be rejected in their entirety.

Dated: October 6, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2014, I caused true copies of Globe's Opposition the General Counsel's Exceptions and Brief in Support of Exceptions to be served via electronic filing, email and Federal Express upon the following

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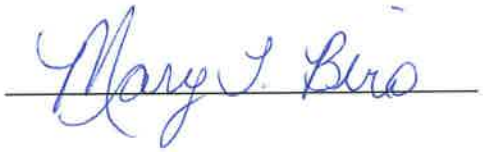

Dated: October 6, 2014